

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**ORDER DIRECTING PETITIONER TO
FILE AN AMENDED PETITION**

JIMMY WALKER, Warden,
Respondent.

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court ordered Respondent to show cause why the petition should not be granted. Respondent has filed an answer, and Petitioner has filed a traverse.

In an Order dated September 30, 2008, the Court granted Petitioner's motion to stay habeas proceeding pending exhaustion of a claim relating to DNA testing, especially upon finding that he had "shown good cause for his failure to exhaust his claim based on the evidence or absence of DNA testing of that evidence before filing the federal petition, and the claim does not appear patently meritless." (Sept. 30, 2008 Order at 2 (citing Rhines v. Webber, 544 U.S. 269, 277-78 (2005).) The Court also stated:

Nothing further will take place in this action until Petitioner receives a final decision from the highest state court and, within **thirty (30) days** of doing so, moves to reopen the action, lift the Court's stay and amend the stayed petition to add the newly-exhausted claim.

(Sept. 30, 2008 Order at 3.)

On February 17, 2010, Petitioner informed the Court that his state proceedings had concluded; however, he did not amend the stayed petition to add the newly-exhausted claim. Therefore, Petitioner must file an amended petition in this Court which incorporates the newly-exhausted claim he intends to raise in federal court. The Court will lift the stay on the date that Petitioner files his amended petition. Petitioner must submit the amended petition on the attached

1 blank habeas petition form, clearly label the petition as the "Amended Petition," and write in the
2 case number for this action on the form. He should also attach to his amended petition a copy of his
3 petition to the California Supreme Court, if the document is available to him. **If Petitioner fails to**
4 **file an amended petition within the prescribed period, the Court will dismiss this action**
5 **without prejudice for failure to prosecute.**

6 The Clerk of the Court shall send Petitioner a blank § 2254 habeas petition form.

7 IT IS SO ORDERED.

8 DATED: 3/2/10


9 SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

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5
6 JORDAN et al,

Case Number: CV06-03626 SBA

7 Plaintiff,

CERTIFICATE OF SERVICE

8 v.

9 WALKER et al,

10 Defendant.

11 _____ /
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
Court, Northern District of California.

13 That on March 3, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
located in the Clerk's office.

16
17 Harol Lam Jordan
18 Salinas Valley State Prison
Prisoner Id V-42322
19 P.O. Box 1050
Soledad, CA 93960

20 Dated: March 3, 2010

21 Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk

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